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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,722	05/23/2001	Valdemar Zawadzki	010315-151	1183

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EXAMINER

SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/862,722

Applicant(s)

ZAWADZKI ET AL.

Examiner

Catherine Simone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of claims 15-24 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that "the method of claims 1-14 relates to producing a fluid-pervious fabric and claim 15 relates to a fluid pervious fabric for imparting a pattern to a fibre web. None of the method steps relate to rendering the fabric fluid-pervious. The method steps relate to deforming a portion of the fabric structure in the Z-direction and the deformation zones. Note that claim 1 specifically states that the fluid permeability remains essentially unchanged. Thus, whether or not a patterned fluid-pervious web can be rendered fluid-pervious by aperturing is irrelevant to the method of claims 1-14." This is not found persuasive because, as stated before in Paper #6, the Examiner has shown in the restriction requirement separate classification of the two groups which would require a different field of search which would further result in a serious burden on the Examiner.

### *Withdrawn Rejections*

2. The 35 U.S.C. 112 rejections of claims 17-24 in Paper #6, Pages 2-3, Paragraph #3 have been withdrawn due to the Applicant's amendment in Paper #8.
3. The 35 U.S.C. 102 rejection of claims 15-24 as being anticipated by Thompson of record in Paper #6, Pages 3-5, Paragraph #5 has been withdrawn due to the Applicant's argument in Paper #8.

Regarding **claim 17**, note the fluid-pervious fabric exhibits the deformation across at least one of the surfaces (Fig. 4, #24).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 18-24** are rejected under 35 U.S.C. 102(b) as being anticipated by Trokhan et al. (5,893,965).

Regarding **claim 18**, Trokhan et al. discloses a patterned fibre web (Fig. 4, #30) comprising a plurality of fibres arranged in a fibre structure having a basis weight and a porosity, wherein the fibre web exhibits a deformation of the fibre structure in the Z-direction deformation zones (Fig. 4, #24), wherein the basis weight and the porosity within the deformation zones (Fig. 4, #24) are essentially equal to the basis weight and porosity outside the deformation zones (see col. 10, lines 48-51 and col. 5, lines 64-67). Regarding **claim 19**, note the deformation zones are visible across both surfaces of the fibre web (Fig. 4, #24). Regarding **claim 20**, note the fibre web has been wet-formed (see col. 4, lines 29-35). Regarding **claim 22**, note the fibre web has been entangled (see col. 7, lines 16-21). Regarding **claim 23**, the fibre web has been through-air dried (TAD) (see col. 2, line 58). Regarding **claims 21 and 24**, they are process limitations and process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art

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discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). In this case, the limitations “has been air-laid” (claim 21) and “wherein the patterns in the fibre web have been created by means of forming or patterning/ aperturing on, or drying or shaping in contact with at least one fluid-pervious fabric according to claim 15” (claim 24) are methods of production and therefore do not determine the patentability of the product itself.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 15-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Trokhan et al. (5,893,965) in view of Van Phan (5,217,576).

Regarding **claim 15**, Trokhan et al. discloses a fluid-pervious fabric for imparting a pattern to a fibre web, the fabric comprising a first surface (Fig. 4, #31), a second surface (Fig. 4, #32) opposite the first surface and a fabric structure comprising a plurality of channels providing fluid permeability between the first and the second surface (see col. 5, lines 49-52), wherein the fluid-pervious fabric exhibits a permanent deformation of the fabric structure in the Z-direction

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in deformation zones (Fig. 4, #24) in which the fluid permeability is essentially equal to the fluid permeability in fabric zones outside the deformation zones (see col. 5, lines 64-67 and col. 7, lines 37-39). However, Trokhan et al. fails to disclose at least one polymer material with a softening temperature. Van Phan teaches that it is old and well-known in the analogous art to have at least one polymer material with a softening temperature (see col. 4, lines 54-57) for the purpose of producing a soft fluid-pervious fabric. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided fabric in Trokhan et al. with at least one polymer material with a softening temperature as suggested by Van Phan in order to produce a soft fluid-pervious fabric.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 15-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703)605-4297. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9311.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Catherine Simone  
Examiner  
Art Unit 1772  
November 12, 2003



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

11/14/03